

FIRST REGULAR SESSION

SENATE BILL NO. 465

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CALLAHAN.

Read 1st time February 7, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1835S.011

AN ACT

To repeal section 191.900, RSMo, and to enact in lieu thereof two new sections relating to the reporting of Medicaid fraud.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 191.900, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 191.900 and 191.907, to read as
3 follows:

191.900. As used in sections 191.900 to 191.910, the following terms
2 mean:

3 (1) "Abuse", the infliction of physical, sexual or emotional harm or
4 injury. "Abuse" includes the taking, obtaining, using, transferring, concealing,
5 appropriating or taking possession of property of another person without such
6 person's consent;

7 (2) "Claim", any attempt to cause a health care payer to make a health
8 care payment;

9 (3) "False", wholly or partially untrue. A false statement or false
10 representation of a material fact means the failure to reveal material facts in a
11 manner which is intended to deceive a health care payer with respect to a claim;

12 (4) "Health care", any service, assistance, care, product, device or thing
13 provided pursuant to a medical assistance program, or for which payment is
14 requested or received, in whole or part, pursuant to a medical assistance
15 program;

16 (5) "Health care payer", a medical assistance program, or any person

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 reviewing, adjusting, approving or otherwise handling claims for health care on
18 behalf of or in connection with a medical assistance program;

19 (6) "Health care payment", a payment made, or the right under a medical
20 assistance program to have a payment made, by a health care payer for a health
21 care service;

22 (7) "Health care provider", any person delivering, or purporting to deliver,
23 any health care, and including any employee, agent or other representative of
24 such a person;

25 (8) **"Knowing" and "knowingly", that a person, with respect to**
26 **information:**

27 (a) **Has actual knowledge of the information;**

28 (b) **Acts in deliberate ignorance of the truth or falsity of the**
29 **information; or**

30 (c) **Acts in reckless disregard of the truth or falsity of the**
31 **information;**

32 **Proof of specific intent to defraud is not required;**

33 (9) "Medical assistance program", any program to provide or finance
34 health care to recipients which is established pursuant to title 42 of the United
35 States Code, any successor federal health insurance program, or a waiver granted
36 thereunder. A medical assistance program may be funded either solely by state
37 funds or by state and federal funds jointly. The term "medical assistance
38 program" shall include the medical assistance program provided by section
39 208.151, RSMo, et seq., and any state agency or agencies administering all or any
40 part of such a program;

41 [(9)] (10) "Person", a natural person, corporation, partnership, association
42 or any legal entity.

191.907. 1. **A person may bring a civil action for a violation of**
2 **subsections 1 to 4 of section 191.905 on behalf of the person and the**
3 **state. The action shall be brought in the name of the person and of the**
4 **state.**

5 2. **In an action brought under this section, a person who violates**
6 **subsection 1 to 4 of section 191.905 is liable as provided by subsection**
7 **11 of section 191.905.**

8 3. **Contemporaneous with the filing of the action, a person**
9 **bringing an action under this section shall deliver a copy of the**
10 **petition upon the attorney general and shall disclose, in writing, all**

11 material evidence and information in the person's possession to the
12 attorney general.

13 4. The petition shall be filed in camera and, except as provided
14 by subsection 5 or 6 of this section, shall remain under seal until at
15 least sixty days following the date the petition is filed, or until the date
16 the state elects to intervene, whichever occurs first. The petition shall
17 not be served upon the defendant until ordered by the court.

18 5. The attorney general, on behalf of the state, may elect to
19 intervene and proceed with the action not later than the sixtieth day
20 following the date the petition is filed. The attorney general may, for
21 good cause shown, move the court to extend this deadline, and may
22 support such motion by affidavits or other submissions in camera.

23 6. Contemporaneous with the decision to intervene, the attorney
24 general may move the court to keep the petition under seal for an
25 extended period of time.

26 7. An action brought under this section may be dismissed before
27 the end of the period during which the petition remains under seal if
28 the court and the attorney general consent in writing to the dismissal,
29 and state in writing the reasons for consenting.

30 8. A defendant in any action brought under this section shall not
31 be required to file an answer to the petition until thirty days following
32 the date the petition is served on the defendant.

33 9. Not later than the last day of the period prescribed by
34 subsection 4 of this section, or an extension of that period granted by
35 the court under subsection 5 of this section, the state shall:

36 (1) Proceed with the action; or

37 (2) Notify the court that the state declines to intervene in the
38 action.

39 10. If the state elects not to intervene in the action, the person
40 who initiated the action shall be entitled to conduct the action. If the
41 state so requests, it shall be served with copies of all pleadings filed
42 and shall be supplied with copies of all deposition transcripts at the
43 state's expense. If the state chooses not to intervene within the period
44 prescribed by subsection 4 of this section, the court, without limiting
45 the status and rights of the person initiating the action, may
46 nevertheless permit the state to intervene at a later date upon a
47 showing of good cause.

48 11. A person other than the state may not intervene or bring a
49 related action based on the facts underlying a pending action brought
50 under this section.

51 12. If the state elects to intervene in the action, it shall have the
52 primary responsibility for conducting the action and shall not be bound
53 by any act of the person who initiated the action. The person who
54 initiated the action shall have the right to continue as a party in the
55 proceeding, subject to the limitations set forth in this section.

56 13. The state may dismiss any action brought under this section
57 notwithstanding an objection by the person who initiated the action,
58 but only if:

59 (1) The attorney general has notified the person who initiated
60 the action that the state has filed a motion to dismiss; and

61 (2) The court provides the person with an opportunity for a
62 hearing on the motion.

63 14. The state may settle the action with the defendant,
64 notwithstanding an objection by the person who initiated the action, if
65 the court determines, after a hearing, that the proposed settlement is
66 fair, adequate, and reasonable, considering all relevant
67 circumstances. Upon a showing of good cause, the hearing may be held
68 in camera.

69 15. Upon a showing by the state that unrestricted participation
70 during the course of litigation by the person who initiated the action
71 would cause harassment of the defendant, or would interfere with or
72 unduly delay the state's investigation or prosecution of the case, or
73 would be repetitious or irrelevant, the court may impose limitations on
74 the person's participation, including:

75 (1) Limiting the number of witnesses the person may call;

76 (2) Limiting the length of the testimony of witnesses called by
77 the person;

78 (3) Limiting the person's cross-examination of witnesses; or

79 (4) Any other limitation on participation that the court deems
80 necessary or appropriate.

81 16. Upon a showing by the defendant that unrestricted
82 participation during the course of litigation by the person bringing the
83 action would be for the purposes of harassment, or would cause the
84 defendant undue burden or unnecessary expense, the court may limit

85 the participation by the person in the litigation.

86 17. Upon a showing by the state that certain actions of discovery
87 by the person bringing the action would interfere with the state's
88 investigation or prosecution of a criminal or civil matter arising out of
89 the same facts, the court may stay the discovery for a period not to
90 exceed sixty days. The court shall hear a motion to stay discovery
91 under this subsection in camera.

92 18. The court may extend the stay of discovery prescribed by
93 subsection 17 of this section upon a further showing in camera that the
94 state has pursued the criminal or civil investigation or proceedings
95 with reasonable diligence and that any proposed discovery in the civil
96 action would interfere with the ongoing investigation or proceedings.

97 19. Notwithstanding subsection 1 of this section, the state may
98 elect to pursue its claim through any alternate remedy available to the
99 state, including any administrative proceeding to determine an
100 administrative penalty. If an alternate remedy is pursued in another
101 proceeding, the person who initiated the action shall have the same
102 rights in the other proceeding as the person would have had if the
103 action brought under this section had continued. Any finding of fact
104 or conclusion of law made in the other proceeding that has become
105 final shall be conclusive on all parties to an action brought under this
106 section. For the purposes of this subsection, a finding or conclusion is
107 final if the finding or conclusion has been finally determined on appeal
108 to the appropriate court of jurisdiction, if no appeal has been filed with
109 respect to the finding or conclusion and all time for filing an appeal
110 has expired, or if the finding or conclusion is not subject to judicial
111 review.

112 20. If the state proceeds with an action under this section, the
113 person bringing the action shall be entitled, except as provided by
114 subsection 21 of this section, to receive at least fifteen percent but not
115 more than twenty-five percent of the proceeds of the action, depending
116 on the extent to which the person substantially contributed to the
117 prosecution of the action. Except as provided by subsection 21 of this
118 section, if the person who initiated an action under this section
119 conducts the action without state intervention, the court shall award
120 the person at least twenty-five but no more than thirty percent of the
121 proceeds of the action. If the court finds that the action is based

122 primarily on disclosures of specific information, other than information
123 provided by the person bringing the action, relating to allegations or
124 transactions in a criminal or civil hearing, in a legislative or
125 administrative report, hearing, audit, or investigation, or from the
126 news media, the court may award the amount the court considers
127 appropriate but not more than ten percent of the proceeds of the
128 action, taking into account the significance of the information and the
129 role of the person bringing the action in advancing the case to
130 litigation. A payment to a person under this subsection shall be made
131 from the proceeds of the action or proceeds of a settlement of the
132 action. A person receiving a payment under this subsection shall also
133 be entitled to receive from the defendant an amount for reasonable
134 expenses, reasonable attorney's fees, and costs that the court finds to
135 have been necessarily incurred. The court's determination of expenses,
136 fees, and costs to be awarded under this subsection shall be made only
137 after the defendant has been found liable in the action. In addition, the
138 defendant shall be required to reimburse the reasonable costs
139 attributable to the attorney general's investigation and prosecution of
140 the action. The office of the attorney general may retain a reasonable
141 portion of recoveries under this section for the enforcement of sections
142 191.900 to 191.910.

143 21. If the court finds that the action was brought by a person
144 who planned and initiated the violation of subsections 1 to 4 of section
145 191.905 on which the action was brought, the court may, to the extent
146 the court considers appropriate, reduce the share of the proceeds of the
147 action the person would otherwise receive under subsection 20 of this
148 section, taking into account the person's role in advancing the case to
149 litigation and any relevant circumstances pertaining to the violation. If
150 the person bringing the action is convicted of criminal conduct arising
151 from the person's role in the violation of subsections 1 to 4 of section
152 191.905, the court shall dismiss the person from the action, and the
153 person may not receive any share of the proceeds of the action. A
154 dismissal under this subsection does not prejudice the right of the state
155 to continue the action.

156 22. If the state does not proceed with the action and the person
157 bringing the action conducts the action, the court may award to the
158 defendant its reasonable attorney's fees and expenses if the defendant

159 prevails in the action and the court finds that the claim of the person
160 bringing the action was clearly frivolous, clearly vexatious, or brought
161 primarily for purposes of harassment.

162 23. A person may not bring an action under this section that is
163 based on allegations or transactions that are the subject of a civil suit
164 or an administrative penalty proceeding in which the state is already
165 a party.

166 24. A person may not bring an action under this section that is
167 based on the public disclosure of allegations or transactions in a
168 criminal or civil hearing, in a legislative or administrative report,
169 hearing, audit, or investigation, or from the news media, unless the
170 person bringing the action is an original source of the information. In
171 this subsection, "original source" means an individual who has direct
172 and independent knowledge of the information on which the allegations
173 are based and has voluntarily provided the information to the state
174 before filing an action under this section that is based on the
175 information.

176 25. The state shall not be liable for expenses that a person incurs
177 in bringing an action under this section.

178 26. A person who is discharged, demoted, suspended, threatened,
179 harassed, or in any other manner discriminated against in the terms of
180 employment by the person's employer because of a lawful act taken by
181 the person in furtherance of an action under this section, including
182 investigation for, initiation of, testimony for, or assistance in an action
183 filed or to be filed under this section, shall be entitled to reinstatement
184 with the same seniority status the person would have had but for the
185 discrimination, not less than two times the amount of back pay, interest
186 on the back pay, and compensation for any special damages sustained
187 as a result of the discrimination, including litigation costs and
188 reasonable attorney's fees. A person may bring an action in the
189 appropriate circuit court for the relief provided in this subsection.

190 27. An action brought under this section shall not be brought
191 more than six years after the date on which the violation was
192 committed, or three years after the date when facts material to the
193 cause of action are known or reasonably known by the attorney
194 general's office or the department of social services, whichever occurs
195 last.

196 28. In any action brought under this section, the state or the
197 person initiating the action shall be required to prove all essential
198 elements of the cause of action, including damages, by a preponderance
199 of the evidence.

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